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ATTORNEY GENERAL

*State of Louisiana*

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

July 12, 2012

OPINION 11-0272A

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MUNICIPAL FIRE & POLICE  
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2012 JUL 17 PM 3:44

Ms. Melinda Livingston  
State Examiner  
8550 United Plaza Blvd, Suite 901  
Baton Rouge, LA 70809-2296

71-1-1 MUNICIPAL FIRE & POLICE CIVIL SERVICE

La. R.S. 33:2541(B)(4).

The state law governing the municipal fire and police civil service places part-time employees in the unclassified service.

Dear Ms. Livingston:

In Opinion 11-0272, this office stated the following: "It is the opinion of this office that a part-time paid firefighter should be placed in the civil service system where (1) his appointment is permanent pursuant to La. R.S. 33:2531<sup>1</sup> and (2) he has as a primary duty one of the duties listed in La. R.S. 33:2541(A)(1-9).<sup>2</sup> In accord are La. Atty. Gen. Ops. 05-249 and 98-267, copies attached."

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<sup>1</sup> La. R.S. 33:2531 states:

§2531. Mandatory civil service in certain municipalities, parishes and districts  
Permanent appointments and promotions for paid firemen and policemen in the classified civil service and enumerated herein in all municipalities having a population of not less than seven thousand and not more than thirteen thousand, according to the last preceding decennial census of the United States for which the final report of population returns have been printed, published and distributed by the director of the census or according to a special census authorized by R.S. 1:11.1 subject to the approval of the local governing authority and verified by the state treasure if said special census is later, and in all parishes and fire protection districts, shall be made only after certification pursuant to a general system based upon merit, efficiency and fitness, under which certificates shall be based on examinations which, so far as practical, shall be competitive, and all employees in the classified service shall be employed from those eligible under such certification.

<sup>2</sup> La. R.S. 33:2541(A)(1-9) provides:

§ 2541. Classified and unclassified service

A The classified service shall comprise every position, except those included in the unclassified service, to which the right of employee selection, appointment, supervision, and discharge is vested in the government of the municipality, parish or fire protection district as the case may be, under which the fire or police service functions, or in an officer or employee thereof, and which has as its primary duty and responsibility one of the following:

(Fire)

1. The chief and assistant chiefs; the intradepartmental division, bureau, squad, platoon and company officers of the fire and police department.
2. Fire fighting and police.
3. Fire prevention; inspection.
4. Driving, tillering and operation of fire apparatus.
5. Operation and maintenance of radio, fire alarm or signal system.
6. Fire and police department instructors in employee training.
7. Fire salvage and overhauling services, and first aid.
8. Automotive or fire and police apparatus repairs, if such service is operated exclusively by and for the fire and police department.
9. Secretary to the chief and departmental records clerk.

The author of Opinion 98-267 elaborated as follows: "In reviewing La. R.S. 33:2533, which defines terms used when referring to the fire and police civil service law, we find that there is no definition for part-time paid firefighters. La. R.S. 33:2531 mandates that any permanent appointment for a paid firefighter shall occur only after certification pursuant to the general system. This statute does not make a distinction between full-time and part-time firefighters. It simply refers to any permanent appointment. Therefore, it is our opinion that under this statute, a part-time paid firefighter should be placed in a civil service system as long as his appointment is permanent and he meets the test set out in La. R.S. 33:2541."

Your office disagrees with the advice rendered in Opinions 05-249 and 98-267, and 11-0272, insofar as that opinion renders similar advice. You rely upon La. R.S. 33:2541(B)(4), providing that "the unclassified service shall comprise the following: (4). Janitors, porters, elevator operators, chefs, kitchen helpers and workers, mechanic's helpers, car washers, unskilled labor or *any part-time or temporary employee.*"

As noted in Opinion 98-267, there is no definition of the phrase "part-time employee" as used in La. R.S. 33:2541(B)(4). However, the doctrine of contemporaneous construction may be applied to clarify the law when the meaning is ambiguous. Under this doctrine, when an administrative body has, over a long period of time, placed an interpretation upon a legislative enactment, that interpretation is given substantial and often decisive weight in the legislation's interpretation. See *Ouachita Parish School Board v. Ouachita Parish Supervisors Association*, 362 So.2d 1138 (La. 1978); *Washington v. St. Charles Parish School Board*, 288 So.2d 321 (La. 1974).

In accord with the doctrine of contemporaneous construction, we defer to the interpretation given by your office as the administrative body responsible for advising local civil service boards regarding the fire and police civil service law. Accordingly, Opinions 05-249 and 98-267 are recalled. Opinion 11-0272(A) is herein corrected, insofar as we now conclude that part-time employees are in the unclassified service.

We hope the foregoing is helpful to you. Should you have other questions with which we may provide assistance, please contact this office.

Very truly yours,

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

BY:



KERRY L. KILPATRICK  
ASSISTANT ATTORNEY GENERAL

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